

WRIT PETITION NO. 383 OF 2003

M/s Elnish Real Estate
Developers & Builders,
a proprietorship concern
through its proprietor,
Mr. Jack Paul D'Souza, major,
builder, having its address
at Xanadu, near Elnish Dynasty
Hotel, Porvorim, Goa.

...Petitioner

Versus

1. Mr. Vitorino Fernandes,
@ Victor Frnandes, major,
married, s/o Diogo Gaspar
Fernandes, and

2. Mrs. Ana Matilda Sara
Fernandes, @ Ms. Natty
Fernandes, major, married,
d/o Bela D'Souza, both
r/o Marna, Siolim,
Bardez, Goa.

...Respondents.

Shri S.R. Rivonkar, advocate for the petitioner.

CORAM : F. I. REBELLO, J.

DATE : 1st August, 2003.

ORAL ORDER

There is a decree for money against the judgment-debtor. That decree was sought to be executed as the judgment-debtor did not satisfy the decretal amount. On 16th April, 2001, notice was issued to the judgment-debtor and was returned stating that it was not found and the decree-holders were directed to take steps. Thereafter the decree-holders took steps and the matter was fixed on 18th June, 2001. Service was then effected by pasting, as can be seen from the order of the Court. In other words, it cannot be said that the judgment-debtor had

no notice of the date on which the application was to be taken up. The grievance of the petitioner is that was not the residential address of the petitioner and, consequently, cannot be said to be good service. The order would disclose that earlier service attempted could not be effected as the judgment-debtor was not present. The decree is for money and is sought to be executed by attachment of the property of the judgment-debtor. Learned counsel was asked whether the property attached belonged to him. Learned counsel is unable to say so specifically, except to set out that there was an agreement to sell those flats. That by itself, would be no answer. Insofar as the judgment-debtor is concerned. If any other person has a right, such person can independently move the Court for setting aside the order of attachment. Considering that the money decree has become final, this would not be a fit case for this Court to exercise its extraordinary jurisdiction.

In the light of that petition rejected.

F. I. REBELLO, J.

mc.